



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

Mr. David Aken
San Patricio County Courthouse
Room 102
Sinton, Texas 78387

OR98-2664

Dear Mr. Aken:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119923.

The San Patricio County Judge (the "county judge") received a request for the investigation report concerning complaints against the former County Health Director. You assert that the information is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. We have considered your arguments and reviewed the information submitted.

Section 552.108 of the Government Code excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

The records at issue appear to concern a personnel matter, not matters related to law enforcement or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from an internal police investigation of a police officer's conduct, section 552.108 is inapplicable). Therefore, the county judge may not withhold the records under section 552.108(a)(2).

However, the submitted documents contain information excepted from public disclosure by privacy under section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that

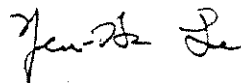
its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the affidavit of the person under investigation and the summary of the investigation, stating that the public's interest was sufficiently served by the disclosure of these documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

After a review of the records, we conclude that you must release the accused's statement and the report of the investigation into allegations of sexual harassment which serves as an adequate summary of the investigation. When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. When no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. *Id.* Thus, you must release the accused's statement and the report after redacting the victims' and witnesses' identifying information. You must withhold the victims' and witnesses' individual statements pursuant to common-law privacy and *Ellen*.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 119923

Enclosures: Marked documents

cc: Mr. Guy H. Lawrence
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(w/o enclosures)